

SUGGESTED RESPONSES TO SPECIFICS OF PROXMIRE LETTER

1. The DCI currently has no power in domestic police and law enforcement matters and the proposal requiring an act of Congress is enforceable by the Executive Branch only through the Department of Justice and in no way involves the authority of the DCI.

2. The proposal does not grant censorship authority to anyone--it permits the Attorney General to seek a restraining order from a court on the basis that the conduct to be restrained is being undertaken by an individual who, as a condition precedent to his engagement with the Federal Government, agreed to receive certain information in trust, protect that information and not to disclose it at his own initiative. Comparable statutes exist in many fields, e.g., Agriculture--commodity information, Census Bureau--confidential information, Internal Revenue Service--tax information. Moreover, there is no prior restraint issue present since only the offender who has the relationship of trust with the Government is subject to any of the features of the proposal--an unauthorized recipient, such as a publisher, is specifically exempted.

3. The National Security Council would have no role in the operation of the statute.

4. The recognition of my responsibilities under the National Security Act is appreciated. What is involved here is a limited and constitutional sanction to deter the unauthorized disclosure of information which would be harmful to citizens of the United States and helpful to potential enemies, in keeping with my statutory responsibility.

5. We are a Government of laws and if conduct by a Federal employee is harmful to the body politic, such conduct should be subject to the sanctions of law enacted as a result of deliberative congressional and Executive action and enforced and adjudicated by the coordinate Executive and Judicial Branches. This proposal recommends this action.

Passive devices will not solve the problem of unauthorized disclosures. Every effort is made to assure that those exposed to sensitive intelligence sources and methods information fully appreciate the need for its protection. An Agency employee can be terminated, of course, if he makes an unauthorized disclosure. But there is no satisfactory way to prevent further disclosures and the same would apply to other former employees and retirees. As a group CIA employees are dedicated professionals, but as to the disgruntled or others the controlling factor in the protection of vital sources and methods information, given the present state of the law, is the individual's personal assessment of what best serves the nation's interest.

6. The National Security Act imposes a statutory responsibility upon the Director to protect intelligence sources and methods. It would only seem to be a logical extension of this responsibility to require the Director to notify the Attorney General if impending criminal conduct of a Federal employee, most likely under the Director's jurisdiction, might endanger sensitive intelligence sources and methods.

7. The precedent for all of the basic features of this proposal, including the injunction provision and the absence of burden of proof as in the case of the espionage statutes, is found in existing law (Atomic Energy Act of 1954 and the Communications Intelligence statute and the Scarbeck statute). Moreover, there are countless statutes on the books which subject the unauthorized disclosure of information received by the Government in confidence to a criminal penalty. Further, the offending Federal employee's motivation and the need to prove harm in such cases is most likely irrelevant under the law.

8. Neither the Agency's action vs Marchetti or the provisions of the proposed legislation involve constitutional rights or prior restraint. The legal theories involved include contract, secrecy agreements as a condition of employment and a privity of relationship and confidence with the Federal Government.

9. See answer to number 7 above.

10. The Attorney General would be the only officer of the Executive Branch with authority to institute action under the proposed legislation. Any individual, including the Director, aware of a violation or intended violation of any Federal criminal statute has the responsibility to call that matter to the attention of appropriate officials.